UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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HILDEE REITER,

Plaintiff,

-against-

MAXI-AIDS, INC. and ELLIOT ZARETSKY, in his individual and professional capacities,

Defendants.
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MEMORANDUM & ORDER

14 CV 3712 (SJF) (GRB)

FEUERSTEIN, District Judge:

Barry Reiter ("Reiter") [1] commenced this action against his former employer, defendant Maxi-Aids, Inc. ("Maxi-Aids") and its principal, defendant Elliot Zaretsky ("Zaretsky"). The case was re-assigned to this Court on April 5, 2018, at which time the trial had already been conducted, a post-trial motion decided, and judgment entered.

In brief, a trial was held before Judge Leonard D. Wexler and the following claims were submitted to the jury: discrimination under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*; discrimination under New York State Human Rights Law ("NYSHRL"), N.Y. EXEC. L. § 290 *et seq.;* associational discrimination under the ADA; and retaliation under the ADA, NYSHRL, and the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 *et seq.* Defendants' counterclaims for breach of duty and breach of loyalty under New York state law were not submitted to the jury. The jury returned a verdict in Reiter's favor as to the ADA associational disability and NYSHRL discrimination claims only, finding in favor of Defendants on the remaining claims. It awarded compensatory damages in the amount of $0, and punitive damages in the amount of $400,000.

[1] Reiter passed away in December 2018 and his wife, Hildee Reiter, was substituted as plaintiff pursuant to Rule 25 of the Federal Rules of Civil Procedure.

Defendants' post-trial motion for relief under Rules 50(b) and 59 of the Federal Rules of Civil Procedure was granted to the limited extent that the statutory cap on punitive damages was imposed, resulting in a reduction of that award to $50,000. *See* Memorandum & Order ("M&O), Docket Entry ("DE") [111]; *Reiter v. Maxi-Aids*, 2018 WL 557864 (E.D.N.Y. Jan. 19, 2018). Judgment was entered on February 2, 2018. *See* Judgment, DE [113].

Now pending before the Court are two additional post-trial motions. Defendants have moved for a modification of the Judgment, *see* Motion, DE [125], and Plaintiff has moved for an award of attorneys' fees. *See* Motion, DE [131]. Both motions are granted to the extent indicated below.

I. MODIFICATION OF THE JUDGMENT

Following disposition of the post-trial motion, Judge Wexler directed Reiter to file a proposed judgment consistent with the M&O. The proposed judgment stated, in pertinent part, that judgment was entered against Maxi-Aids and Zaretsky, jointly and severally, "in the amount of $50,000.00 in punitive damages, $6,626.84 for economic damages, plus pre-judgment interest of $ _____ running to the date of entry of this order, as well as post-judgment interest. . . from the date of entry of this order to the date of payment." The proposed judgment was entered by Judge Wexler. Defendants argue that the Judgment does not accurately reflect the jury verdict and the rulings stated in the M&O and thus should be amended. Specifically, Defendants argue that the judgment is in error because (1) punitive damages were awarded against Maxi-Aids only and not Zaretsky; and (2) the language in the judgment awarding pre-judgment interest suggests that such interest is applied to both the punitive damages award and the economic damages award where it should only apply to the latter.

Plaintiff does not oppose amendment of the judgment to the extent of entering judgment for the punitive damages award against Maxi-Aids only. An amended judgment will reflect this correction.

As to pre-judgment interest, Plaintiff suggests that Judge Wexler had impliedly exercised his discretion to award pre-judgment interest on both awards simply by adopting the Order and leaving a blank for a pre-judgment interest amount. The prior rulings in the case suggest otherwise. In the M&O, Judge Wexler reduced the punitive damages award to $50,000 without reference to pre-judgment interest, and within that same order, denied Plaintiff's request to allow the running of post-judgment interest on this award commencing on the date of the jury verdict rather than the date of judgment. If he had intended to make a discretionary award of pre-judgment interest on the punitive damages amount, he clearly would have done so. Moreover, this Court has independently reviewed the proceedings here and has determined that a discretionary award of pre-judgment interest is not warranted on this record.

The insertion of a comma in that part of the judgment ordering recovery of "economic damages "of $6,626.87, plus pre-judgment interest of $_____. . ." contributes to the confusion. As the Judgment could be mistakenly construed to include an award of pre-judgment interest on the award of punitive damages, an Amended Judgment will be issued.

II. APPLICATION FOR ATTORNEYS' FEES AND COSTS

Plaintiff seeks an award of attorneys' fees and costs incurred during this litigation, plus pre-and post-judgment interest. Defendants oppose the application.

A. Prevailing Party Fees

"The general rule in our legal system is that each party must pay its own attorney's fees and expenses." *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 550, 130 S. Ct. 1662, 176 L. Ed.

2d 494 (2010). Under the American Rule, attorneys' fees "are not ordinarily recoverable in the absence of a statute or enforceable contract providing therefor." *U.S. Fid. & Guar. Co. v. Braspetro Oil Servs. Co.*, 369 F.3d 34, 74 (2d Cir. 2004) (quoting *Summit Valley Indus., Inc. v. United Bhd. of Carpenters & Joiners*, 456 U.S. 717, 721, 102 S. Ct. 2112, 72 L. Ed. 2d 511 (1982)); *see also Oscar Gruss & Son. Inc. v. Hollander*, 337 F.3d 186, 199 (2d Cir. 2003) (noting that "[u]nder the general rule in New York, attorneys' fees are the ordinary incidents of litigation and may not be awarded to the prevailing party unless authorized by agreement between the parties, statute, or court rule").

Plaintiff here seeks to recover all his attorneys' fees, both for fees incurred in prosecuting his claims and in defending the counterclaims. The availability of fees is addressed separately for each category of claims.

1. Reiter's Claims

The ADA provides for the payment of "a reasonable attorney's fee, including litigation expenses, and costs" to a prevailing party. 42 U.S.C. §12205. For the purpose of awarding fees, a plaintiff is a prevailing party "when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." *Farrar v. Hobby*, 506 U.S. 103, 111, 113 S. Ct. 566, 121 L. Ed. 2d 494 (1992). The plaintiff "must obtain at least some relief on the merits of his claim" such as by an enforceable judgment. *Id.; see also Ruggiero v. Krzeminski*, 928 F.2d 558, 564 (2d Cir. 1991) (holding that a party is "prevailing" if he succeeds on any significant issue in the litigation that achieves some of the benefit sought, even when he achieves only partial success). Reiter clearly prevailed on his associational discrimination claim under the ADA and is entitled to recover

reasonable attorneys' fees and costs.[2] Defendants argue, however, that an award in the amount sought is not warranted in light of Plaintiff's limited recovery on his claims.

The result obtained by a plaintiff is a crucial factor in determining a reasonable attorneys' fee "where a plaintiff is deemed 'prevailing' even though he succeeded on only some of his claims for relief." *Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983). Where a plaintiff has presented "distinctly different claims for relief that are based on different facts and legal theories," and has not achieved complete success, "no fee may be awarded for services on the unsuccessful claim." *Id.*, 461 U.S. at 434-35; *see also Green v. Torres*, 361 F.3d 96, 98 (2d Cir. 2004) (in determining attorneys' fees, "the court may exclude any hours spent on severable unsuccessful claims"). However, where a plaintiff's claims "involve a common core of facts or [are] based on related legal theories . . . and are therefore not severable, [a]ttorney's fees may be awarded for unsuccessful claims as well as successful ones." *Green*, 361 F.3d at 98 (internal quotation marks and citations omitted; alterations in original); *see also Reed v. A.W. Lawrence & Co.*, 95 F.3d 1170, 1183 (2d Cir. 1996) ("Where the district court determines that the successful and unsuccessful claims are inextricably intertwined and involve a common core of facts or [are] based on related legal theories, it is not an abuse of discretion for the court to award the entire fee." (internal quotation marks and citation omitted)); *Pinner v. Budget Mortg. Bankers, Ltd.*, 336 F. Supp. 2d 217, 222 (E.D.N.Y. 2004) (lack of success on sexual harassment and hostile work environment claims did not warrant fee reduction were those claims were "inextricably linked" to successful retaliation claim).

Here, all of Reiter's claims arose from incidents occurring during his two (2) years of

[2] While Reiter also prevailed on his disability discrimination claim under the NYSHRL, that statute does not provide for an award of attorneys' fees except in cases alleging housing discrimination. *See Lightfoot v. Union Carbide Corp.*, 110 F.3d 898, 914 (2d Cir. 1997); *Tse v. New York Univ.*, No. 10-CV-7207, 2016 WL 10907062, at *31 n.12 (S.D.N.Y. Aug. 29, 2016).

employment at Maxi-Aids. The claims on which he was unsuccessful – discrimination under the ADA, and retaliation under the ADA, NYSHRL, and FMLA – all arose from intertwined facts and required similar factual predicates. As the unsuccessful claims asserted related legal theories and were based on a core of facts common to all claims, they are not severable from Plaintiff's successful claims. Accordingly, the hours expended pertaining to the unsuccessful claims will not be excluded or reduced.

2. Defendants' Counterclaims

Plaintiff also seeks to recover attorneys' fees expended in the defense of the two counterclaims interposed by defendants. Plaintiff has failed to support his claim for fees related to his defense against those claims. He has not argued, much less established, that he has a statutory or contractual right to recover attorneys' fees as to either of these claims. Absent a statutory or contractual basis for recovery of attorneys' fees, the American Rule applies. The following entries pertain to plaintiff's defense of the counterclaims:

- 39 entries for 88.7 hours billed regarding Plaintiff's first motion to dismiss the counterclaim, DE [11], filed in September 2014, totaling $23,792.50;
- 13 entries for 16.6 hours billed regarding Plaintiff's second motion to dismiss the counterclaim, DE [32], filed in March 2015, totaling $4,910.00;
- 22 entries for 45.9 hours billed regarding Plaintiff's response/answer to Defendants' amended counterclaim and depositions, totaling $13,490.00;
- 10 entries for 23.6 hours billed regarding Plaintiff's pre-motion conference letter to the Court in anticipation a motion for summary judgment as to the counterclaims, totaling $6,145.00;
- 79 entries for 230.4 hours billed regarding Plaintiff's motion for summary judgment on the counterclaims, DE [62], filed in April 2016, totaling $53,257.50.

The time billed for defense of the counterclaims, 405.2 hours, and the related fees totaling

$101,595.00, will be excluded from the fee award.[3]

B. Calculation of Award

The determination of a reasonable fee lies with the Court. In the Second Circuit, "the lodestar–the product of a reasonable hourly rate and the reasonable number of hours required by the case–creates a 'presumptively reasonable fee.'" *Millea v. Metro-North R.R. Co.*, 658 F.3d 154, 166 (2d Cir. 2011) (quoting *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cty. of Albany*, 522 F.3d 182, 183 (2d Cir. 2008)). In calculating the presumptively reasonable fee, the court looks to what a reasonable, paying client would be willing to pay, "bear[ing] in mind that a reasonable, paying client wishes to spend the minimum necessary to litigate the case effectively." *Arbor Hill*, 522 F.3d at 190 . "While a court may, in exceptional circumstances, adjust the lodestar, it may not disregard it entirely." *Millea*, 658 F.3d at 169 (citation omitted).

1. Hourly Rate

A reasonable hourly rate must be considered within the context of the relevant legal "community;" specifically, "the district where the district court sits." *Arbor Hill*, 522 F.3d at 190; *see also Simmons v. New York City Transit Auth.*, 575 F.3d 170, 174 (2d Cir. 2009) (noting the presumption favoring application of the rates where the case is litigated, not where the attorneys are located). Accordingly, in determining a reasonable hourly rate, the court considers the prevailing rates of lawyers with comparable skill, experience, and reputation in the district in which the action was commenced and litigated. *See Reiter v. MTA New York City Transit Auth.*, 457 F.3d 224, 232 (2d Cir. 2006). In fee-shifting cases in this District, fees have been awarded at an hourly rate of $300 to $450 for partners, $100 to $325 for associates, and $70 to $100 for paralegals. *See Feltzin v. Ciampa Whitepoint LLC*, No. 15 Civ. 2279, 2017 WL 570761, at *2

[3] As there is no basis for recovery of these fees, analysis of the reasonableness of the charges is unnecessary.

(E.D.N.Y. Feb. 13, 2017) (collecting cases); *see also Douyon v. N.Y. Med. Health Care, P.C.*, 49 F. Supp. 3d 328, 352 (E.D.N.Y. 2014) (noting awards of $200 to $300 per hour for senior associates and $100 to $200 per hour for junior associates).

Plaintiff seeks to recover feses for twelve (12) billing professionals – a partner, Lawrence M. Pearson ("Pearson"); four (4) associates, Tanvir H. Rahman ("Rahman"), Kenneth D. Sommer ("Sommer"), James C. Underwood, III ("Underwood"), and Brian A. Bodansky ("Bodansky"); and seven (7) paralegals. The credentials and experience of the professionals is set forth in Pearson's declaration submitted in support of this motion. Declaration of Lawrence M. Pearson, DE [133]. The requested rates for work performed are $425 per hour for Pearson, $325 per hour for senior associate Rahman, $200 per hour for junior associates Sommer, Underwood, and Bodansky, and $100 per hour for the paralegals. Defendants have not challenged the hourly rate charged by any of the billing professionals. Upon review of the qualifications of the billing professionals, the Court finds that the rates sought fall within the recognized or reasonable rates in this District.

2. Work Performed

The party seeking reimbursement of attorney's fees bears the burden of proving the reasonableness and the necessity of the hours spent and rates charged. *See N.Y. State Ass'n for Retarded Children, Inc. v. Carey*, 711 F.2d 1136 (2d Cir. 1983). A fee application must be supported by contemporaneous time records that describe with specificity, by attorney, the nature of the work done, the hours expended, and the dates on which the work was performed. *Cruz v. Local Union No. 3 of the IBEW*, 34 F.3d 1148, 1160-1161 (2d Cir. 1994). "The time records submitted in support of an application for attorney's fees must be sufficiently detailed to determine the reasonableness of the hours claimed for any given task." *Parrish v. Sollecito*, 280

F. Supp. 2d 145, 171 (S.D.N.Y. 2003). "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley*, 461 U.S. at 433. The quality of the billing records may impact a fee award since vague or incomplete billing entries may hinder a court's ability to review hours.

Plaintiff has provided two copies of time records in support of the motion. One set covers billings from April 11, 2014 through May 18, 2018 and seeks fees totaling $511,507.50. The description of work performed is completely blocked out, however, and thus cannot be used to support the application. The other submission covers billings from April 11, 2014 through March 12, 2018 and seeks fees totaling $500,565.00. The descriptions in this document are unredacted and therefore may be considered in support of the application. Upon exclusion of the time expended to defend the counterclaims, Plaintiff seeks fees for 1498.5 hours worked totaling $385,445.00, plus 39 hours of travel time for a fee of $13,525.00.

a. Travel Time

Plaintiff seeks recovery of 39 hours of travel time costs at the full hourly rate for a total of $13,525.00. "Courts in this Circuit regularly reduce attorneys' fees by 50 percent for travel time." *LV v. New York City Dep't of Educ.*, 700 F. Supp. 2d 510, 526 (S.D.N.Y. 2010); *see also Tjartjalis v. Prof'l Claims Bureau*, No. CV 14-1412, 2016 WL 4223493, at *3 (E.D.N.Y. Aug. 9, 2016) ("travel time is customarily recoverable at one-half counsel's reasonable hourly rate."). The amount sought for travel time here will be reduced by one-half to **$6,672.50**.

b. Work Time

In determining whether a reasonable number of attorney hours were expended, the court should "examine the hours expended by counsel and the value of the work product of the particular expenditures to the client's case" and "[i]f the court determines that certain claimed

hours are excessive, redundant, or otherwise unnecessary, the court should exclude those hours in its calculation of the lodestar." *Gierlinger v. Gleason,* 160 F.3d 858, 876 (2d Cir. 1998) (internal quotations and citations omitted). It is well-established that, given the impracticality of a line-by-line review of individual records, "a district court may exercise its discretion and use a percentage reduction 'as a practical means of trimming fat from a fee application.'" *McDonald ex rel. Prendergast v. Pension Plan of the NYSA–ILA Pension Trust Fund*, 450 F.3d 91, 96 (2d Cir. 2006) (quoting *Kirsch v. Fleet St. Ltd*, 148 F.3d 149, 173 (2d Cir. 1998)).

Overstaffing of a case can lead to a reduction due to redundant or duplicative work performed. *See, e.g., Struthers v. City of New York*, No. 12 CV 242, 2013 WL 5407221, at *8-9 (E.D.N.Y. Sept. 25, 2013) (reducing fees because the fees requested for responding to motion papers were "excessive"); *Am. Lung Ass'n v. Reilly*, 144 F.R.D. 622, 627 (E.D.N.Y. 1992) (finding that the "use of so many lawyers for relatively straightforward legal tasks was excessive and led to duplication of work," and deducting 40% of plaintiffs' lawyer's hours). It is within the court's discretion reduce the attorneys' fees sought "where the prevailing party assigned an inordinate number of attorneys to litigate the action." *Houston v. Cotter*, 234 F. Supp. 3d 392, 404 (E.D.N.Y. 2017); *see also Lochren v. Cty. of Suffolk*, 344 F. App'x 706, 709 (2d Cir. 2009) (affirming across the board 25% cut "because plaintiffs overstaffed the case, resulting in the needless duplication of work and retention of unnecessary personnel").

In addition, courts routinely apply across-the-board reductions for vague entries, imposing "reductions as high as 40% based solely on vague billing entries." *Anderson v. Cty. of Suffolk*, No. CV 09-1913, 2016 WL 1444594, at *6 (E.D.N.Y. Apr. 11, 2016) (collecting cases). Utilization of "block billing" by aggregating multiple tasks into one entry also may impact the Court's ability to assess reasonableness, resulting in a percentage reduction. *See Hines v. City of*

Albany, 613 F. App'x 52, 55 (2d Cir. 2015) (summary order) (noting that while block billing "is not per se unreasonable," such entries may "frustrate[] meaningful review of the reasonableness of the claimed hours"); *Bond v. Welpak Corp.*, No. 15-CV-2403, 2017 WL 4325819, at *8 (E.D.N.Y. Sept. 26, 2017) (block billing "makes it difficult if not impossible for a court to determine the reasonableness of the time spent on each of the individual services or tasks provided."(internal quotation marks and citation omitted); *LV*, 700 F. Supp. 2d at 525 (stating that since "block-billing can make it exceedingly difficult for courts to assess the reasonableness of the hours billed . . . courts have found it appropriate to cut hours across the board by some percentage" (internal quotation marks and citation omitted)).

Upon review of the time records, a significant reduction in the number of hours billed is warranted. At every point in the litigation, a minimum of one partner, a senior associate, a junior associate, and a paralegal were actively participating in the case. More than one attorney often participated in telephone conferences, and documents were routinely reviewed and/or edited by multiple attorneys and staff. Furthermore, given the number of professionals involved with the case, the records are replete with "conferences" between them. *See Pope v. Cty. of Albany*, No. 1:11-CV-0736, 2015 WL 5510944, at *13 (N.D.N.Y. Sept. 16, 2015) (noting that the "proliferation of intra-office conferences" is a symptom of overstaffing and imposing 40% reduction). The time to perform routine tasks was also excessive. For example, there are at least twelve (12) entries totaling over fourteen (14) hours for preparing HIPAA authorizations, including two (2) entries on the same date by different paralegals to "mail" the forms. *See* Entries of 11/4/14. No reasonable paying client would be willing to pay for overstaffing resulting in duplicative work.

A reduction is also appropriate given the vagueness of many billing entries. There are numerous entries for: "Review discovery" or "Review discovery requests," *see, e.g.,* THR Entry of 12/1/14, THR Entry of 2/5/15; "Review file" or "Analyze case file," *see, e.g.,* LMP Entry of 5/14/15, THR Entry of 6/10/15; "Emails with opposing counsel" or "Correspondence with opposing counsel," *see, e.g.,* THR Entry of 4/30/15, LMP Entry of 1/11/16; entries that appear ministerial such as "Compile and save client documents," "Save USB documents to client documents drive; file USB," *see, e.g.*, JB Entry of 11/25/14, JB Entry of 12/2/14. Without further explanation, it is impossible for the Court to determine whether the time spent was reasonable. In addition, instances of "block billing" by aggregating multiple tasks into one entry serve to obfuscate the time allotted to specific tasks, rendering it impossible to determine the reasonableness of the expenditure. *See, e.g.*, THR Entry of 8/4/15; SEM Entry of 5/25/16; KDS Entry of 7/12/16.

A reduction of 30% will serve to "trim the fat" and address the vagueness and redundancy of many of the billing entries. Accordingly, counsel's fee is reduced by 30%. The Court awards **$276,574.00** in attorneys' fees, summarized as follows:

Task/Subject	**Hrs Billed**	**Amt Sought**	**Reduction**	**Award**
Defense of counterclaims	405.2	$101,595.00	100%	-0-
Travel time	39	$13,525.00	50%	$6,762.50
Prosecution of P's Claims	1498.5	$385,445.00	30%	$269,811.50
TOTAL FEE AWARD:				**$276,574.00**

3. Enhancement of the Attorneys' Fees Award

Plaintiff suggests that the award should be adjusted upward based on the application of additional factors set forth in *Hensley.* While enhancements may be appropriate in "rare and exceptional circumstances," *Perdue,* 559 U.S. at 552 (internal quotations marks and citations omitted), generally "the lodestar figure includes most, if not all, of the relevant factors

constituting a 'reasonable' attorney's fee." *Id.* at 553. As a result, there is a "'strong presumption' that the lodestar figure is reasonable," that may only be overcome "in those rare circumstances in which the lodestar does not adequately take into account a factor that may properly be considered in determining a reasonable fee." *Id.* at 554. The burden of proving that an enhancement is necessary is borne by the party seeking the enhancement, and the applicant must produce "specific evidence that supports the award." *Id.* at 553 (internal quotation marks and citations omitted). Here, Plaintiff has not demonstrated any factor beyond the lodestar calculation that rises to the level of a rare and exceptional circumstance warranting enhancement. Accordingly, the request for an upward adjustment is denied.

4. Costs

Plaintiff seeks an award of costs in the total amount of $27,100.55. As the movant, plaintiff "bears the burden of demonstrating the reasonableness of each charge; failure to provide adequate documentation of costs incurred will limit, or even defeat, recovery." *Piedra v. Ecua Rest., Inc.*, No. 17CV3316, 2018 WL 1136039, at *20 (E.D.N.Y. Jan. 31, 2018), *adopted by* 2018 WL 1135652 (E.D.N.Y. Feb. 28, 2018). Indeed, "it is incumbent upon the party seeking reimbursement of its costs to provide the Court adequate substantiation in the form of receipts and other documents not only showing such costs were incurred, but that they were paid." *Cabrera v. Schafer*, No. CV126323, 2017 WL 9512409, at *4 (E.D.N.Y. Feb. 17, 2017), *adopted by* 2017 WL 1162183 (E.D.N.Y. Mar. 27, 2017). In the absence of adequate substantiation, a party is not entitled to recover costs. *See Douyon*, 49 F. Supp. 3d at 352 ("with this record, the Court has no way of confirming that these costs . . . were incurred by counsel"); *Joe Hand Promotions, Inc. v. Elmore*, No. 11-cv-3761, 2013 WL 2352855, at *12 (E.D.N.Y. May 12, 2013) (declining to award costs due to an absence of documentation).

In the Bill of Costs filed March 12, 2018 and attached to this application, Plaintiff sought costs in the amount of $11,671.01 for court reporter fees, process servers, witness travel, trial exhibits, transcripts, and a video deposition. Documentation was provided to support an award of these costs. Those costs are recoverable and properly supported and thus will be included in the award in the amount sought, **$11,671.01.**

In addition to the costs itemized in the Bill of Costs, Plaintiff seeks costs for copies and color copies, medical records, overnight delivery and postage, travel costs (car rentals, mileage, gas, taxi service, parking, tolls, subway tolls), hotels, meal expenses, PACER fees, and Westlaw fees. These costs appear on a list without detailed description and without any supporting documentation.

The Court accepts counsel's records regarding routine out-of-pocket expenses such as copying, postage/overnight delivery, and medical records and will allow recovery of these costs. To the extent those costs relate to defense of the counterclaims, however, some reduction is warranted. As the counterclaims constituted approximately 20% of the total time billed in this case, the costs for copying ($5,720.77), and postage/overnight ($308.73) delivery will also be reduced by 20% to a total of **$4,823.60**. The medical records relate to Plaintiff's claims only and thus the full amount of **$653.28** will be included in the award.

Plaintiff seeks reimbursement for $3,158.06 for Westlaw research. "[I]n the context of a fee-shifting provision, the charges for such online research may properly be included in a fee award." *Arbor Hill*, 369 F.3d at 98. The entries are dated the first of the calendar month, which is likely not the date of service, and the record submitted provides no specific information as to who performed the research or its scope. As such, there is no way to determine what research was done in support of plaintiff's direct claims as opposed to work performed as to the non-

compensable counterclaims. Eliminating those months corresponding to the billings related to the motion practice on the counterclaims, the recoverable cost for Westlaw is reduced to **$1,833.67**.

Plaintiff further requests $74.80 in PACER fees. Courts have found such costs to be subsumed within an attorney's fee and not a separate cost. *See, e.g., Cardoza v. Mango King Farmers Mkt. Corp.*, No. 14-CV-3314, 2015 WL 5561033, at *19 (E.D.N.Y. Sept. 1, 2015) ("Plaintiffs have failed to show the Court how the attorney's fees are not crafted to absorb such fees"), *adopted by* 2015 WL 5561180 (E.D.N.Y. Sept. 21, 2015). The PACER fees are not awarded as a cost.

As to the remaining costs sought, Plaintiff has not provided any explanation as to why they were reasonable or necessary. Plaintiff does not address the numerous travel and meal costs,[4] and the records submitted are conclusory and of questionable accuracy. *See Lucky Brand Dungarees, Inc. v. Ally Apparel Res., LLC*, No. 05 CIV. 6757, 2009 WL 466136 at *7 (S.D.N.Y. Feb. 25, 2009) (denying recovery of local transportation where application "does not tell us why transportation was necessary, whether it was for trips to court or due to overtime or weekend work."). A spot check comparing the dates of taxi service and meal expenses with the billing records reveals that on several occasions, the professional charging the expense did little or even no work on this case on the date the expense was incurred. *See, e.g.*, JXB - 4/6/16 (no billing entry, charged taxi); JBM Entry of 6/23/15 (billed 0.5 hr., charged meal and taxi); KDS Entry of 9/11/15 (billed 0.8 hr, charged meal); JBM Entry of 6/17/15 (billed 1.0 hr., charged meal). The Court declines to award the remaining costs.

Accordingly, costs are awarded in the total amount of **$18,981.56**.

[4] From June 12, 2014 to September 27, 2016, counsel billed meal expenses for one or more professionals on over eighty (80) separate dates.

III. CONCLUSION

Plaintiff's motion for attorneys' fees, DE [131], is granted to the extent that fees are awarded in the amount of **$276,574.00** and costs in the amount of **$18,981.56** for a total award of **$295,555.56.** Defendants' motion to modify the Judgment, DE [125], is also granted.

The Clerk of the Court shall enter an Amended Judgment awarding Plaintiff: (1) punitive damages against Defendant Maxi-Aids, Inc. in the amount of $50,000.00; (2) economic damages against Defendants Maxi-Aids, Inc. and Elliot Zaretsky, jointly and severally, in the amount of $6,626.87 plus pre-judgment interest running to the date of judgment; and (3) attorneys' fees and costs in the total amount of $295,555.56.

SO ORDERED.

/s/
Sandra J. Feuerstein
United States District Judge

Dated: April 16, 2019
Central Islip, New York